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11 *Weican Null Meng*

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 ZHANG ZIYI, an individual,

15
16 Plaintiff,

17 vs.

18
19 CHINA FREE PRESS, INC., a North
20 Carolina non-profit corporation doing
21 business as BOXUN NEWS; WEICAN
22 NULL MENG, an individual known as
23 WATSON MENG and also WEICAN
24 “WATSON” MENG; DOES 1-25,
25 inclusive,

26
27 Defendants.

Case No. CV12-5216-DMG (PLAX)

**DEFENDANT WEICAN NULL
MENG’S MOTION FOR ORDER
REQUIRING PLAINTIFF TO
POST UNDERTAKING
PURSUANT TO CALIFORNIA
CIVIL PROCEDURE § 1030**

Hearing Date: Jan. 25, 2013
Courtroom 7
7:30 AM

DEFENDANT WEICAN NULL MENG'S MOTION FOR ORDER
REQUIRING PLAINTIFF TO POST UNDERTAKING PURSUANT TO
CALIFORNIA CIVIL PROCEDURE § 1030

Defendant Watson Null Meng hereby moves this Court for an Order requiring Plaintiff Zhang Ziyi to post an undertaking in the suggested amount of \$200,000.00 pursuant to California Code of Civil Procedure § 1030. Defendant Meng relies upon this Motion, the attached memorandum of points and authorities, the attached exhibits and deposition excerpts, the papers and pleadings on file in this action, and any oral argument permitted by this Court.

Pursuant to Local Rule 7-3, this motion is made following the conference of counsel which took place on December 13, 2012.

Dated December 24, 2012

Respectfully Submitted,
RANDAZZA LEGAL GROUP



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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Although China has liberalized its economy in recent years, it has not liberalized its political climate. *See* Composite Exhibit A. The result is that China now brings us the worst of both worlds – the totalitarianism endemic to communist regimes plus the excess and corruption of laissez-faire capitalism. Today’s China is, ruled by a union of the worst of these two worlds, for the benefit of a small central group of old-guard Communist and newly-rich kleptocrats. In such an environment, there can be no such thing as a free press. Where Americans take their journalists and press for granted, anyone who dares to expose corruption or wrongdoing in China is a target for prison or worse.

Defendant Meng administers an independent Chinese dissident news service. The service’s primary purpose is to illuminate the true political climate and underlying tensions in the People’s Republic of China. Despite swimming against strong currents in an ecosystem designed to destroy freedom of expression and freedom of the press, Meng’s service has managed to establish a reliable source for dissident news. (Depo. of Weican “Watson” Meng Vol. II at 66:2-7; Depo. of Mary Hausch Vol. II at 30:18-31:11; Suppl. Report of Mary Hausch, attached as Exhibit B, at 3-4) This service has frequently been the first to break stories pertaining to corruption and wrongdoing on the other side of the Red Curtain. (Depo. of Meng Vol. I at 13:20-14:4)

Needless to say, the Chinese government is not one of his fans. China’s Central Communist Party banned the site from access in mainland China since shortly after the site’s inception in 2000. In order to operate, Meng must operate his organization as an information-smuggling operation. Watson Meng and his underground news network is the online equivalent of Wang Weilin who famously stood in front of the Chinese Army’s tanks in Tiananmen Square.

1 As in any totalitarian regime, there are people locked down inside who yearn
 2 for freedom, not only for themselves, but for all who suffer under the regime's
 3 yoke. Meng counts his network of sources inside China among them. (Depo. of
 4 Meng Vol. II at 33:13-34:24) His information sources face persecution,
 5 imprisonment, or even death for their part in this exercise. (*id.*; Docket # 21-3 ¶¶
 6 21-36, 38-41) Despite the difficulties they face, the organization is remarkably
 7 accurate in its reporting, and is internationally recognized as such. (Docket # 39-3
 8 (Report of David Ardia) ¶¶ 55-61,¹ 63; Depo. of Meng Vol. II at 66:2-7; Depo. of
 9 Hausch Vol. II at 30:18-31:11)

10 Given the fact that the Chinese government is constantly working to
 11 discredit this news organization, Meng holds himself to high levels of credibility –
 12 above and beyond what would be expected of a western journalist operating in
 13 complete freedom. (Docket # 39-3 ¶¶ 55-61, 63; Exhibit B at 3-4; Depo. of
 14 Hausch Vol. II at 21:8-22:25, 33:21-25, 36:11-37:25, 86:23-87:25, 131:11-17, and
 15 133:1-13; Depo. of Meng Vol. I at 38:4-25)

16 As a result, Meng's network is stunningly reliable, bringing some stories to
 17 Meng that sound fantastic when first reported, but always seem to be proven true.
 18 (Docket # 39-3 ¶¶; Exhibit B at 3-4, 9; Depo. of Hausch at 30:18-31:11; Depo. of
 19 Meng Vol. II at 66:2-7; Depo. of Meng Vol. III at 17:8-23) For example, Meng
 20 was among the first to break a story about the wife of a high-ranking member of
 21 the Communist Party murdering a British businessman, the beginning of many
 22 scandals involving Bo Xilai. (Depo. of Meng Vol. I at 13:20-14:4; Depo of Meng
 23
 24

25 ¹ Professor David Ardia was deposed in this matter on December 19, 2012. At the
 26 time of this motion, his deposition transcript was unavailable. However,
 27 Defendant Meng shall supplement this motion with the relevant excerpts of
 28 Professor Ardia's deposition as soon as they are available.

Vol II at 39) This story, fantastic in nature when it broke, has even been acknowledged by the Chinese government and resulted in Bo Xilai's ouster.²

Boxun began breaking the Bo Xilai story in February 2012. (Depo. of Meng Vol. I at 13:20-14:4). Part of the story was the fact that Bo Xilai was reportedly engaged in widespread sexual misconduct. This too, was initially denied, but eventually acknowledged as true – even by the Chinese government.³

The Plaintiff is one of China's new fortunate few. As an International film star, she finds her attention and company sought after by many in China's financial and political elite. She certainly has little to gain from any boat-rocking behind the Red Curtain.

Plaintiff's claims relate to articles published on the Boxun website stating that one of Bo Xilai's sexual escapades involved her – and that he lavished her with gifts, as did her other wealthy consorts. This story was widely reported, world-wide, but the Plaintiff only trained her legal daggers on dissident news services. This leads to the likely conclusion that this is less about the Plaintiff's annoyance with the published articles and more about power, privilege, and Watson Meng as a gadfly for both inside China.

Regardless of the motivations for this lawsuit, the record establishes that this lawsuit is legally meritless – even if the stories were entirely false (a notion that the Defendant emphatically denies). Meng's articles were published according to accepted journalistic standards, based on public records and credible sources.

² *Bo Xilai Scandal: Timeline*, BBC (Oct. 25, 2012), <http://www.bbc.co.uk/news/world-asia-china-17673505> (last accessed Dec. 24, 2012).

³ See Michael Sainsbury, *Beijing Rewrites The Bo Xilai Scandal History*, The Australian (Nov. 12, 2012), available at <http://www.theaustralian.com.au/news/world/beijing-rewrites-the-bo-xilai-scandal-history/story-e6frg6so-1226514688384> (last accessed Dec. 24, 2012).

(Docket # 39-3 ¶¶ 50, 60-64; Exhibit B at 3-4, 7; Depo. of Hausch Vol. II at 21:8-22:25, 33:21-25, 36:11-37:25, 86:23-87:25, 131:11-17, and 133:1-13; Depo. of Meng Vol. I at 38:4-25; Depo. of Meng Vol. II at 39:15-41:20, 43:8-23 and 43:24-44:3; Depo. of Meng Vol. III at 134:25-135:2, 138:14-18) As salacious as the details are, the sexual issues are a side-show to the larger story – the story of corruption and scandal inside the Chinese Communist Party and the highest echelons of China’s business elite, and how the two work together.

Plaintiff Zhang Ziyi censoriously demanded that any articles about her come off the Defendant’s website in their entirety. (Docket # 1 Exh. D). It was apparent from this demand that Zhang Ziyi’s complaint was motivated by more than personal outrage. The demand lacked the focus required under California Civil Code § 48a, but the litigation seems to have a specifically focused mission: punishing Meng for exercising his right to free speech guaranteed by the United States Constitution, or flushing out the identity of Meng’s sources, presumably so that they would face a dissident’s fate in China.

It is also clear that the Plaintiff filed the instant lawsuit presuming that Defendant Meng would be incapable of adequately defending it. Plaintiff is an international celebrity worth hundreds of millions of dollars, while Defendant Meng is a man of extremely limited means, running a dissident website on a shoestring budget. To say that he is financially out-matched is an understatement. This case bears all the telltale signs of a SLAPP suit, and seems certain to fall as they usually do in speech-protective California.

In 1992, the California legislature enacted Civil Procedure Code § 425.16, California’s anti-SLAPP statute. *See Briggs v. Eden Council for Hope and Opportunity*, 81 Cal. Rptr. 2d 471, 483 (Cal. 1999). “SLAPP suits are often brought for purely political purposes in order to obtain an economic advantage over the defendant, not to vindicate a legally cognizable right of the plaintiff.” *See*

1 *Rogers v. Home Shopping Network, Inc.*, 57 F. Supp. 2d 973, 974 (C.D. Cal. 1999),
 2 *citing Briggs*, 81 Cal. Rptr. 2d at 483. SLAPP suits are used to harass defendants
 3 who “spoke out on matters of public concern and often could not afford to defend
 4 even a meritless suit.” *Briggs*, 81 Cal. Rptr. 2d at 479-80.

5 Despite any facts and any legal issues in this case, this Motion itself comes
 6 down to something very simple. California Code of Civil Procedure § 1030 does
 7 not require Meng to overcome a heavy burden. If a plaintiff resides outside of
 8 California and the defendant has a *reasonable possibility* of obtaining a monetary
 9 judgment in his favor, then the plaintiff must be compelled to post security for that
 10 possible judgment. As such, Defendant Meng respectfully requests that the instant
 11 Motion be granted in his favor.

12 **II. STATEMENT OF FACTS**

13 The standard required for a 1030 bond is quite low: The defendant must
 14 show that the plaintiff resides out of state,⁴ and that the defendant has a **reasonable**
 15 **possibility** of obtaining judgment against the plaintiff, such as in a special motion
 16 to strike. CCP 1030; 425.16. Both are shown here.

17 In a defamation action, a 1030 bond is particularly appropriate, since the
 18 California Anti-SLAPP statute provides for a non-discretionary award of attorneys’
 19 fees against a plaintiff the plaintiff cannot show that it has a probability of winning
 20 the case in chief, and that its lawsuit against the defendant arose from the
 21 defendant’s exercise of that defendant's First Amendment rights.

22 In this case, the defendant does not have a mere “*reasonable possibility*” of
 23 prevailing on his anti-SLAPP motion, but a virtual certainty of doing so.

24 The underlying defamation case is so poorly founded that there is virtually
 25 no possibility that the claims could be successful. The plaintiff is, without
 26

27 ⁴ This fact is undisputed.

question, a “public figure.” (Docket #1 at 2; Docket #21 at 10). As a public figure, she bears the burden of proving that the complained-of statements themselves are not only false, but made with actual malice – i.e., knowledge of their falsity, or a reckless disregard for the truth. See *Philadelphia Newspapers v. Hepps*, 475 US 767, 776 (1986) (“The plaintiff [must] bear the burden of showing falsity, as well as [the defendant's] fault.”); *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19-20 (1990) (plaintiff must prove statements false in a defamation case); *St. Amant v. Thompson*, 390 U.S. 727 (1969).

With respect to the Plaintiff being able to prove the statements false, the Plaintiff has a couple of insurmountable problems. First and foremost, the case boils down to two allegedly defamatory statements.

1) The Plaintiff (falsely) claims that the Defendant called her a “prostitute.” (Deposition of Mary Hausch, Vol. I at 64:10-13; Deposition of Mary Hausch, Vol. II at 9:8-9) However, the record clearly reflects that the Defendant did no such thing (Depo. of Hausch, Vol. II at 9:10-14; Docket #1 at 16-22; Depo. of Watson Meng, Vol. II at 42:20-24; Depo. of Meng, Vol. III at 40:19-20; Depo. of Meng, Vol. III at 57:5-7). In fact, the claim that she is a “prostitute” seems to have only been uttered by third parties, including Plaintiff's own counsel. (Depo. of Hausch, Vol. I at 64:10-13; Depo. of Hausch, Vol. II at 9:8-9; Depo. of Meng, Vol. II at 56-57 and 58:4-7; Depo. of Meng, Vol III at 53:20-21)

2) The Defendant (correctly) claims that Plaintiff was not permitted to leave China during a certain period of time. (Docket #1 at 5; Depo. of Meng, Vol. II at 69:17-22; Docket # 39-3 ¶ 50).

With respect to the first statement, the record clearly reflects that this interpretation of the defendants' statements is a fabrication. The Defendant, at worst, implied that Zhang Ziyi had wealthy boyfriends who lavished her with expensive gifts. (Depo. of Meng Vol. III at 123-24) Given her public persona, and

1 the fact that she is frequently unabashed about sharing her affections with wealthy
 2 paramour after wealthy paramour, this is almost certainly a given. Zhang Ziyi's
 3 conduct could be less-than-charitably described as "gold-digging" (Depo. of Meng,
 4 Vol. II at 56:15-24; Depo of Hausch Vol. II at 62:1-10 and 66:2-10), but it is a far
 5 cry from "prostitution." If Ms. Ziyi intends to prove that she has never received
 6 any largesse or gifts from her series of wealthy boyfriends, then this will be an
 7 interesting trial to say the least.

8 As to the second statement, one must wonder what would be defamatory
 9 about claiming that a Chinese national found her travel privileges to be temporarily
 10 restricted. Given that the Chinese government is one of the most totalitarian
 11 regimes in the world, anyone prohibited from leaving the country would find
 12 themselves in good company, if not among some international heroes. (See
 13 Composite Exhibit A) Even if the statement was held to have a defamatory
 14 meaning, and the defendant uttered the statements complained of, the plaintiff
 15 would still run into a legal impossibility – overcoming the actual malice standard
 16 in order for her case to survive.

17 In a Defamation case involving a public figure plaintiff, the Plaintiff must
 18 prove, by clear and convincing evidence, that the defendant knew his statements to
 19 be false, or published them with a reckless disregard for the truth, while harboring
 20 serious personal doubt as to whether they were true or not. *Gertz v. Robert Welch,*
 21 *Inc.*, 418 U.S. 323, 342-43 (1974). The record reflects that this is not the case, and
 22 after the Plaintiff's insisted-upon discovery campaign, it is conclusively
 23 established that the Plaintiff will never be able to overcome her burden.

24 The record clearly reflects that the Defendant objectively believed every
 25 statement published to be true. (Depo. of Meng Vol. I at 38:7-25; Depo. of Meng
 26 Vol. II at 63; Depo. of Meng Vol. III at 139:16-141:9; Depo. of Hausch Vol II. At
 27 23:1-9, 33:21-25, 37:15-25, and 133:21-23; Exhibit B at 4; Docket # 39-3 at ¶¶ 55-

59). Meng still believes that everything he wrote was 100% true. (Depo. of Meng Vol. I at 38:7-25; Depo. of Meng Vol. III at 139:16-141:9; Aff. of Watson Meng ¶¶ 15-17). Therefore, the question of “knowing falsity,” is already conclusively decided in favor of the Defendant.

The only way that the Plaintiff could prevail in this case would be to show that the defendant had a reckless disregard for the truth, while harboring serious doubts as to the veracity of his reporting. *Ampex Corp. v. Cargle*, 128 Cal. App. 4th 1569, 1578 (Cal. Ct. App. 2005); *see St. Amant*, 390 U.S. at 731. However, the Plaintiff cannot possibly show that either. *Harte-Hanks Comm’ns v. Connaughton*, 491 U.S. 657, 688 (1989) (holding that “reckless disregard” for the truth requires more than a mere departure from prudent conduct); *Garrison v. Louisiana*, 379 U.S. 64 74 (1964) (requiring evidence that a defendant had a “high degree of awareness of ... probable falsity” about the information to show reckless disregard for the truth); *Newton v. National Broadcasting Co.*, 930 F.2d 662, 680 (9th Cir.1990) (holding that negligence “can never give rise to liability in a public figure defamation case”).

The record reflects that when Mr. Meng first heard the stories, he harbored limited doubts about certain details of the story. (Depo. of Meng III at 143:12-19). Any good journalist would, and should, have a healthy dose of skepticism about any story. Meng acted upon this journalist’s skepticism, by seeking out not one, but two additional sources to confirm the story. (Depo. of Meng Vol. III at 137:23-138:4, 142:12-24; Depo. of Hausch Vol. II at 21:13-25; Hausch Suppl. Report of Findings, attached as Exhibit B at 3-4 and 10-11; Docket # 39-3 ¶¶ 22-42, 55-59). As noted above, Meng holds his service to the same standards, if not ones *higher* than his free-ecosystem colleagues. (Depo. of Meng Vol. I at 38:10-25; Depo. of Meng Vol. II at 39-44; Depo. of Meng Vol. III at 139:5-141:9, 142:2-24; Exhibit B at 3-4, 6, 10-11; Docket # 39-3 ¶¶ 22-42, 55-59) He must do so, as

1 even a slight error would be exploited by the Communist Chinese regime in order
 2 to discredit his internationally acclaimed reputation for accurate and courageous
 3 reporting. (Depo. of Meng Vol. II at 66:2-7; Depo of Hausch Vol. II at 30:20-
 4 31:25; *see* Depo. of Meng Vol. I at 38:14-17 (“official news organizations, you
 5 know, they always – they know the facts; they – and they manipulate the – the
 6 words or they give totally false – false information.”))

7 Meng actually believed the details to be more salacious than what he
 8 reported, but testified that he pulled his punches – only reporting the facts that he
 9 felt were beyond question, and provided by reliable sources. (Depo. of Meng Vol.
 10 III at 16:3-9, 17:8-23, and 142:19-24; Exhibit B at 3-4 and 10-11; Docket # 39-3).

11 At this point, two experts have examined Meng’s journalistic practices,
 12 finding them to be beyond reproach. (Exhibit B at 3-4 and 10-11; Docket # 39-3)
 13 Both found that Meng believed the stories to be true when he published them.
 14 (Depo. of Hausch Vol. II at 33:21-34:4; Exhibit B at 3-4 and 10-11; Docket # 39-3
 15 ¶¶ 60-64) Both further found that Meng went above and beyond what he had to in
 16 order to report on these matters responsibly. (Depo. of Hausch Vol. II at 21:13-
 17 23:17; Exhibit B at 3-4 and 10-11; Docket # 39-3 ¶¶ 55-58). Both found that
 18 Meng did not harbor any doubt about the veracity of his articles. (Exhibit B at 3-4;
 19 Docket # 39-3 ¶¶ 60-61) Both found that Meng engaged multiple credible sources
 20 for his articles. (Depo. of Hausch Vol. II at 21:13-23:17, 36:14-37:11; Exhibit B at
 21 3-4; Docket # 39-3 ¶¶ 55-58, 61). Accordingly, even if we assume *arguendo* that
 22 the stories are erroneous, Meng was not so much as *negligent* in publishing them.
 23 (Depo. of Hausch Vol. II at 21:13-23:17; Exhibit B at 3-4 and 10-11; Docket # 39-
 24 3 ¶¶ 25-58). He most certainly did not publish them with a reckless disregard for
 25 the truth. (Depo. of Hausch Vol. II at 46:5-47:19; Exhibit B at 3-4 and 10-11;
 26 Docket # 39-3 ¶¶ 25-58, 60-61). Unfortunately, even when confronted with this
 27 inescapable legal conclusion, the Plaintiff still insists upon trying to pound the

1 defendant into submission with a costly and wasteful litigation campaign. (*See*
 2 Docket # 39 (requiring Meng to engage in motion practice to supplement the
 3 record)).

4 When the defendant moved to strike this case under CCP 425.16, the
 5 Plaintiff immediately took steps to start an expensive and relentless discovery
 6 campaign. Mr. Meng was deposed three times. Mr. Meng produced reams of
 7 documents. The Plaintiff conducted three expert depositions. Throughout all of
 8 this, the Plaintiff has not produced one shred of evidence that Meng's statements
 9 were false. Even if she were to somehow do so, mere falsity is not enough: she
 10 must also prove that Meng harbored serious doubts about the accuracy of his
 11 published information and recklessly disregarded the truth. Nevertheless, the
 12 Plaintiff's discovery campaign has done nothing more than create a rock-solid
 13 record that the Plaintiff could never overcome her legal burden. The Plaintiff has,
 14 in an effort to run up the bill on the Defendant, managed to disprove her own case
 15 so solidly, that the "reasonable possibility" standard was left behind long ago.

16 **III. LEGAL ARGUMENT**

17 "[F]ederal district courts have the inherent power to require plaintiffs to post
 18 security for costs." *Simulnet E. Assoc. v. Ramada Hotel Operating Co.*, 37 F.3d
 19 573, 574 (9th Cir. 1994). A federal district court "follow[s] the forum state's
 20 practice" when deciding whether it is appropriate to require security. *Id.*
 21 California Code of Civil Procedure § 1030(a) governs and provides that "*When the*
 22 *plaintiff in an action or special proceeding resides out of state, or is a foreign*
 23 *corporation, the defendant may at any time apply . . . for an order requiring the*
 24 *plaintiff to file an undertaking to secure an award of costs and attorney's fees.*" A
 25 request for an order requiring security should be granted if "there is a **reasonable**
 26 **possibility** that the moving defendant will obtain judgment in the action." Cal.
 27

1 Code Civ. Pro. § 1030(b). Section 1030 applies to reasonable attorney's fees a
 2 party may be authorized to recover. Cal. Civ. Proc. Code § 1030(a).

3 Meng has met this standard. Plaintiff resides in China and Defendant Meng
 4 has, at the very least, a **reasonable possibility** of obtaining a judgment against
 5 Zhang Ziyi in this action.

6 **A. Plaintiff Resides Outside of the State of California.**

7 The defendant must first establish that the plaintiff resides out of state in
 8 order to be entitled to security under California Civil Procedure Code § 1030. Cal.
 9 Code Civ. Pro. § 1030(b). Here, Plaintiff admits in her Complaint that she “resides
 10 in China.” (Complaint, ¶ 2) As such, the first prong of the test pursuant to Section
 11 1030 has been met.

12 **B. There is a Reasonable Probability That Defendant Will Obtain**
 13 **Judgment in His Favor.**

14 The Defendant does not need to show that he has an overwhelming chance
 15 of prevailing in order to justify a 1030 undertaking. See *Gabriel Technologies*
 16 *Corp. v. Qualcomm, Inc.*, No. 08-CV-1992, 2010 U.S. Dist. LEXIS 98229, 2010
 17 WL 3718848, at *5 (S.D. Cal. Sept. 20, 2010) (“To satisfy the requirements of
 18 section 1030, Defendants must produce sufficient evidence to demonstrate they
 19 have a ‘reasonable possibility’ of defeating . . . Plaintiffs' claims, but no more.”) A
 20 reasonable possibility of prevailing on his special motion to strike (Docket #21) is
 21 all that defendant Meng must show, and the record evidence in this case establishes
 22 this already.

23 As evidenced by Defendant Weican Null Meng’s Special Motion to Strike
 24 under California Civil Procedure § 425.16 (Docket # 21) (the “Motion to Strike”),
 25 and the evidence in the record, and referenced in this Motion, Defendant has, at the
 26 very least, a reasonable possibility of judgment in his favor. In fact, Defendant’s
 27

1 likelihood of success is overwhelming. Defendant's alleged statements regarding
 2 Plaintiff fall squarely within the speech that California's anti-SLAPP law was
 3 specifically designed to protect.

4 Rather than repeat all of the arguments made in Defendant Meng's Motion
 5 to Strike, Defendant Meng incorporates those arguments into the instant Motion by
 6 reference. The arguments contained in Defendant Meng's Motion to Strike
 7 demonstrate that he has, at the very least, demonstrated the requisite "reasonable
 8 probability" that he will secure judgment against Plaintiff.

9 Moreover, the equities mandate that the instant Motion should be granted.
 10 Plaintiff Zhang Ziyi is an international celebrity with means that far exceed those
 11 of Defendant Watson Meng. (Docket #1 ¶¶ 8-9 (detailing Plaintiff's career
 12 successes); Aff. of Watson Meng ¶¶ 5). A \$200,000 bond will not deprive her of
 13 access to the courts, and will likely not even cover the costs of litigation.⁵ The
 14 Plaintiff does not reside in California, and in fact, resides in a country where the
 15 Defendant is *persona non grata*. (Meng Aff. ¶¶ 6-10; see Docket # 21-3 ¶¶ 22-23,
 16 29 and 36; Depo. of Meng Vol II at 34:17-20) If this court were to grant a fee
 17 award to Defendant, he would not likely find justice if he attempted to enforce that
 18

19 ⁵ In attempting to avoid having to file this Motion at all, the Defendant did offer to
 20 stipulate to a lower bond amount. However, Plaintiff flatly refused to stipulate to
 21 **any** bond amount whatsoever. See Exhibit C. This strongly suggests that the
 22 Plaintiff is well aware of the fact that the case is headed toward dismissal under
 23 California's Anti-SLAPP law, and will be subject to its automatic award of
 attorneys' fees and costs, but does not intend to honor any judgment.

24 Additionally, while this Motion could first be filed only on December 24, 2012 –
 25 Christmas Eve – Meng's counsel provided Plaintiff's attorneys with a substantially
 26 completed draft of this motion on December 13, 2012 as part of their meet-and-
 27 confer efforts under Local Rule 7-3. This provided Plaintiff's counsel with
 28 additional time to anticipate and respond to this motion, as Plaintiff was
 uninterested in reaching a stipulated resolution.

1 award in a country whose government considers him to be a thorn in their side, and
2 where there is no independent judiciary. (*See* Docket # 21-3 ¶¶ 36-41)

3 Because she does not reside in the State of California, Plaintiff should be
4 required to post an undertaking so that Meng may be assured of recouping his fees
5 and costs following the hearing on the Motion to Strike. (Meng Aff. ¶¶ 3-4) The
6 purpose of Section 1030 is to ensure that a fee award against an out of state
7 plaintiff is not difficult to collect, or fully illusory. The facts of this particular case
8 are probably the most extreme example of the necessity of an undertaking under
9 Section 1030. The Plaintiff is a mega-millionaire with unlimited means; the
10 defendant is all but impecunious; and the defendant would have no reasonable way
11 to collect a fee award, as the plaintiff would be able to simply hide behind a border
12 that the defendant cannot cross. If there was a case that called for a 1030
13 undertaking, this is it.

14 **C. Defendant Meng Can Expect to Incur at Least \$200,000 in**
15 **Recoverable Costs and Fees.**

16 Defendant Meng has already incurred significant costs and fees, and can
17 expect to incur significantly more in an effort to dispose of this SLAPP lawsuit.
18 The amount is difficult to accurately predict, but the Defendant can estimate his
19 eventual presumed fee award. The United States Court of Appeals for the Ninth
20 Circuit has adopted the Lodestar method for calculating reasonable attorneys' fees
21 in situations like the instant case. *See Jordan v. Multnomah County*, 815 F.2d
22 1258, 1262 (9th Cir. 1987). The Lodestar amount is calculated by multiplying the
23 number of hours the prevailing party reasonably expends on the litigation by a
24 reasonable hourly rate.

25 Defendant Meng submits that the standard hourly rates of his counsel are
26 reasonable rates. Partners Marc Randazza and Ronald Green bill at \$550 per hour
27 and \$400 per hour, respectively. Associate J. Malcolm DeVoy bills at \$325 per
28

hour. (Meng Aff. ¶¶ 11-14) Counsel's hourly rates are, if anything, lower than the average hourly rates by experienced litigators in this District. In fact, the Laffey Matrix, which is frequently used to determine reasonable hourly rates for attorneys of varying experience levels, indicates that counsels' rates are well below the average for their experience levels.

With regard to hours expended, it is only possible for counsel to give a rough estimate of the number of hours that can be expended in the instant litigation. Thus far, Meng's counsel has spent nearly 300 total hours on the instant litigation. That time includes the time necessary to research and review the relevant facts pertaining to this case, to draft the Motion to Strike and various other pleadings, and to participate in the discovery that Plaintiff demanded prior to the hearing on the Motion to Strike. Meng has also retained the services of three (3) expert witnesses who have additionally incurred more than \$12,000 in costs. (Meng Aff. ¶¶ 11-14)

The hearing on Meng's Motion to Strike is scheduled for January 25, 2012. Meng estimates that, by the time the hearing on the Motion to Strike occurs, his counsel will have spent approximately 325 hours on this litigation. Therefore, he requests that Plaintiff Zhang Ziyi be required to post an undertaking in the amount of \$200,000 to cover Defendant Meng's anticipated costs and fees in this matter.

IV. CONCLUSION

California Code of Civil Procedure § 1030 provides that a Plaintiff shall be required to post an undertaking to secure expected costs and fees if that Plaintiff does not reside in the State of California and there is a reasonable possibility that Defendant will obtain a favorable judgment. Plaintiff Zhang Ziyi admittedly does not reside in the State of California, and Defendant Watson Null Meng has shown that there is – at the very least – a reasonable possibility that he will obtain

1 judgment in the instant matter. As such, Plaintiff Zhang Ziyi should be required to
2 post an undertaking sufficient to secure an eventual award of costs and fees.
3 Defendant has estimated that his fees and costs incurred by the time the Motion to
4 Strike is heard will likely approach or exceed \$200,000.⁶ Thus he requests an
5 undertaking in that amount.

6 Dated December 24, 2012

Respectfully Submitted,
RANDAZZA LEGAL GROUP

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9 

10 _____
11 Marc J. Randazza
12 Jason A. Fischer
13 Attorneys for Defendant,
14 Weican Null Meng
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25 _____
26 ⁶ In the event that the Court dismisses the case on January 25, 2013, this Motion
27 will not be moot unless the Plaintiff stipulates, at that time, that she will not appeal
28 the dismissal. In fact, at that time, an amended undertaking may be in order, so
that the costs and fees on appeal may be recovered as well.

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I am a representative of Randazza Legal Group and that on this 24th day of December, 2012, I caused the document(s) entitled:

**DEFENDANT WEICAN NULL MENG'S MOTION FOR ORDER
REQUIRING PLAINTIFF TO POST UNDERTAKING PURSUANT TO
CALIFORNIA CIVIL PROCEDURE § 1030**

and all attachments to be served by the Court's CM/ECF system.

/s/ Marc J. Randazza

Marc J. Randazza